IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9344 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI @ LALO SHARIFBHAI JUNEJA (SINDHI)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9344 of 2004

MR PRAVIN GONDALIYA for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/01/2005

ORAL JUDGEMENT

1. The present petition is filed by the petitioner under Article 226 of the Constitution of India

challenging the detention order passed against him by the Police Commissioner, Vadodara, on 2nd of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The detenue was held to be dangerous person by the detaining authority within the meaning of Section 2(c) of the PASA Act and he came to be detained from 2nd of July, 2004 in pursuance of the detention order.

2. The grounds of detention as served upon the petitioner and placed on record reveal that the detaining authority took into consideration 3 crimes registered against the detenue - (1) under Sections 395 and 397 of the IPC before Makarpura Police Station on 28.2.2004; (2) under Section 379 of the IPC before Dhoraji City Police Station on 14.5.2004 and (3) under Sections 394 and 114 of the IPC on 14.5.2004 at Junagadh 'B' Division Police Station. The petitioner was arrested on 17th of May 2004 in the first offence; on 16.5.04 in the second offence and on 14.5.04 in the third offence. From the possession of the petitioner including cash, panasonic phone, Soni make tape recorder, car tape, mobile phone, colour TV, etc were found and seized by the Police, alleged to have been stolen by the petitioner. The detaining authority based his subjective satisfaction on investigating papers of these three criminal cases, and in addition to this, the detaining authority also placed reliance on in-camera statements of two witnesses recorded by sponsoring authority on 28.6.2004 and 29.6.2004 and verified by the detaining authority on 30.6.2004. These two incidents, as narrated by two witnesses, are unreported incidents as described by the detaining authority. The first incident is of 27.4.2004 and second is of 2nd of May, 2004 where in both the incidents, it is alleged that the petitioner along with his associates behaved high handedly with the witnesses and disrupted public tranquility and public order. Detaining authority also considered other steps to prevent the dangerous activities of the petitioner but in view of detaining authority, the steps under general law, was likely to take time and dangerous activities of the petitioner was required to be prevented immediately and, therefore, there was no other alternative except to pass order of detention under the PASA Act. It was alleged that the petitioner had formed a gang of headstrong persons, who were keeping dangerous weapons and they committed thefts and robberies and were in habit of picking up of quarrels with citizens and, therefore, the safety of citizens and public order was in imminent danger. The detaining authority also considered that in the cases registered against the petitioner, the detenue

was in judicial custody when detention order came to be passed on 2nd of July, 2004, but in view of detaining authority, there was likelihood of filing bail application by the petitioner, and there was likelihood of releasing him on bail by the court. In view of detaining authority, if the petitioner was released on bail, then he was likely to continue his antisocial dangerous activities and hence detaining authority passed order of detention, which is challenged in this petition.

3. Learned Advocate Mr.Pravin Gondaliya for the detenue and learned AGP Mr.HM Prachchhak for the respondents were heard at length. Affidavit-in-reply filed by the detaining authority as placed on record by learned AGP has also taken into consideration.

4. Various grounds pressed in service for quashing and setting aside the order impugned in this petition. Out of various grounds raised by learned Advocate for the petitioner, two grounds were mainly advanced forcefully. It was contended that the order of detention came to be passed belatedly because in the crimes registered against the petitioner, he came to be arrested on 17th of May, 2004, 16th of May, 2004 and 14th of May 2004. In-camera statements of witnesses came to be recorded by sponsoring authority only on 28th of June and 29th of June, 2004, which was verified on 30th of June, 2004 by the detaining authority. Though the incidents which are narrated by the witnesses are the incidents allegedly occurred on 27th of March 2004 and 2nd of May 2004, but delay has been caused in passing the order on 2nd of July, 2004. The next submission was in respect of non-application of mind by the detaining authority as to bail of the petitioner. According to the statement made by the learned Advocate for the detenue, right from the date of arrest, the petitioner was in judicial custody and still petitioner is in judicial custody, the question of continuing antisocial activity by the petitioner would not arise. It was, in sum and substance, contended that in respect of filing of bail application or in respect of likelihood of petitioner being released on bail, there was no material before the detaining authority, which reveals non-application of mind vitiating the detention order. It was urged that the order under challenge is required to be quashed and set aside for the above reasons.

5. As against that, learned AGP Mr. HM Prachchhak, referring to the dates of the offences, the dates of arrest of the petitioner and the date of occurrence of unreported incidents, stated that there is no delay in

passing the order of detention. In para-11 of the affidavit-in-reply filed by the detaining authority, the delay is explained by the detaining authority. With regard to the next contention, it was stated that as per the general law, the detaining authority could reasonably believe that the petitioner would prefer bail application and detaining authority could reasonably also believe that he was likely to be released on bail by competent court. Having regard to the antecedents of the petitioner, he was also likely to continue his antisocial activities. According to learned AGP in para - 12 of the affidavit-in-reply the detaining authority has sufficiently explained the circumstances in this regard wherein the detaining authority stated that the petitioner could file bail application before the appropriate court, but if he is released on bail, the petitioner once again indulge into anti-social activities prejudicial to the maintenance of public order. It was urged that after properly satisfying subjectively, the detention order came to be passed, which is not required to be interfered with in this Application.

6. On going through the record available with this Court and evaluating the contentions raised by both the sides as mentioned above, the petition can be decided on the ground that whether there was proper application of mind by the detaining authority in respect of bail. It is undisputed fact that in all the three criminal cases registered against the petitioner, he was in judicial custody when order of detention came to be passed by the detaining authority and never preferred any bail application. Therefore, firstly, when petitioner was in judicial custody, there was no likelihood of continuing antisocial dangerous activities so as to disturb the public order by the detenue. True it is that, in proper cases, on material placed before him, the detaining authority may reach to the subjective satisfaction that the petitioner was likely to be released on bail. In proper cases, the detaining authority on placing of material before him, may reach to the subjective satisfaction that the petitioner may file appropriate bail application. Though the likelihood of filing of bail application by the petitioner and likelihood of releasing the petitioner on bail both are entirely different and separate propositions, but in both the cases or any of the cases, of likelihood of filing bail application by the petitioner and/or likelihood of releasing the petitioner on bail, there must be some credible material before the detaining authority to reach to the subjective satisfaction either about likelihood of filing of bail application and/or likelihood of

petitioner being released on bail or for both. In the present case, the detenue did not prefer any bail application to be released him on bail. For this, there was no iota of material placed before the detaining authority to reach to the subjective satisfaction that the petitioner was likely to file bail application, nonetheless, likelihood of releasing the petitioner on bail. The position is explained by the Apex Court in the matter of AMRUTLAL vs. UNION OF INDIA, as reported in AIR 2000 SC 3675, wherein the Apex Court observed that there must be cogent materials before the Officer passing the detention order that detenue was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the Officer passing the order of detention. In this case, admittedly, the detenue was in judicial custody while the order of detention came to be passed and no bail application whatsoever was preferred by the detenue. So, there was no material at all before the detaining authority to reach to the subjective satisfaction that the detenue was likely to file bail application and was likely to be released on bail. When the subjective satisfaction of the detaining authority is vitiated in this respect in total absence of material, then the inference drawn by the detaining authority that after releasing on bail, the detenu shall continue his dangerous antisocial activities to prejudice the maintenance of public order, also stands vitiated. The order under challenge, therefore, suffers from vise of non-application of mind by the detaining authority while passing the order of detention as aforesaid.

7. In this view of the matter, the order under challenge is required to be quashed and set aside only on this ground and no other ground raised is required to be discussed.

8. In view of the above discussion, the petition is allowed and the detention order passed against the detenue under the PASA Act by Commissioner of Police, Vadodara, on 02 of July, 2004, is quashed and set aside. The detenue - Babubhai @ Lalo Sharifbhai Juneja (Sindhi) is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J. R. Vora, J)

p.n.nair